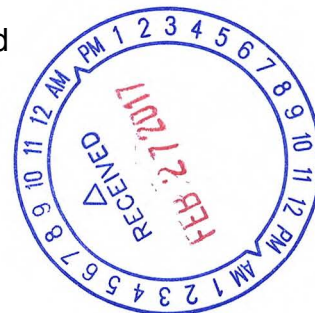


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Office of Proceedings
February 27, 2017
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36105



**GENESEE & WYOMING INC.
– ACQUISITION OF CONTROL EXEMPTION –
ATLANTIC WESTERN TRANSPORTATION, INC. AND HEART OF GEORGIA
RAILROAD, INC.**

**MOTION OF GENESEE & WYOMING INC.
FOR PROTECTIVE ORDER**

Expedited Consideration Requested

ERIC M. HOCKY
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Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: February 24, 2017

Attorneys for Genesee & Wyoming Inc.

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 36105

GENESEE & WYOMING INC.
– ACQUISITION OF CONTROL EXEMPTION –
**ATLANTIC WESTERN TRANSPORTATION, INC. AND HEART OF GEORGIA
RAILROAD, INC.**

**MOTION OF GENESEE & WYOMING INC.
FOR PROTECTIVE ORDER**

Expedited Consideration Requested

Genesee & Wyoming Inc. (“GWI”), a publicly-traded non-carrier holding company, hereby moves for entry of a protective order in substantially the form attached hereto as Exhibit A.

GWI is concurrently filing a Petition for Exemption pursuant to 49 U.S.C. §10502 and 49 C.F.R. §1121 to exempt from the provisions of 49 U.S.C. §§11323-11324 GWI’s acquisition of control of Atlantic Western Transportation, Inc. (“AWT”), a non-carrier holding company, and indirect control of AWT’s wholly-owned subsidiary Heart of Georgia Railroad, Inc. (“HOG”), a Class III railroad. As part of the negotiation of the Stock Purchase Agreement, GWI and AWT’s shareholders (the “AWT Shareholders”) have exchanged information that includes (or is based on) proprietary and commercially sensitive information, including shipper-specific traffic data, financial data and other confidential information the disclosure of which could have an adverse competitive impact on GWI, AWT and/or HOG. Additionally, in connection with the Petition for Exemption, GWI is filing a copy of the Stock Purchase Agreement that governs the

acquisition. As part of the Petition for Exemption, GWI is filing a redacted “public” version of the Stock Purchase Agreement, and is filing, under seal, a “highly confidential” copy of the Stock Purchase Agreement along with this Motion for a Protective Order.

Issuance of the protective order, as the Board has routinely done in prior control cases, will ensure that the Board will receive full disclosure of all relevant facts while ensuring that proprietary and commercially sensitive information in the Stock Purchase Agreement and in other documents will be protected from unnecessary public disclosure and will be used only in connection with this proceeding and not for any other business or commercial use.

Accompanying this Motion are a draft Protective Order and Undertakings similar to those issued by the Board in other proceedings under 49 U.S.C. § 11323. *See for example, Genesee & Wyoming Inc.—Acquisition of Control Exemption (Including Existing Interchange Commitment)—Arkansas Midland Railroad Company, Inc., The Prescott and Northwestern Railroad Company, and Warren & Saline River Railroad Company*, STB Docket No. FD 36105 (served December 5, 2014).

Because the Petition for Exemption is being filed simultaneously with the redacted copy of the Stock Purchase Agreement, GWI requests expedited consideration of this Motion.

For the foregoing reasons, GWI requests that the Board enter a Protective Order in substantially the form attached hereto.

Respectfully submitted,


ERIC M. HOCKY
CLARK HILL PLC
One Commerce Square
2005 Market Street, Suite 1000
Philadelphia, PA 19103
(215) 640-8500
ehocky@clarkhill.com

Dated: February 24, 2017

Attorneys for Genesee & Wyoming Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served by email
on counsel for HOG:

Matthew D. Williams
MATTHEW D. WILLIAMS & ASSOCIATES LLC
2215 Pilgrim Mill circle
Cumming, GA 30041
MWilliams@WilliamsLegalSolutions.com

and by U.S. mail, postage prepaid on the following:

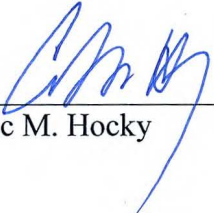
Governor Nathan Deal
Office of the Governor
206 Washington Street
111 State Capitol
Atlanta, GA 30334

Georgia Department of Transportation
Office of Intermodal Programs
600 West Peachtree Street NW, Suite 2300
Atlanta, GA 30308

John M. Scheib
Vice President, Law
Norfolk Southern Railway Corporation
3 Commercial Place
Norfolk, VA 23510

Ellen M. Fitzsimmons, General Counsel
CSX Transportation, Inc.
500 Water Street
Jacksonville, FL 32202

President
Georgia Southern Railway Co.
1318 Johanson Road
Peoria, IL 61607



Eric M. Hocky

Dated: February 24, 2017

APPENDIX

PROTECTIVE ORDER

1. For purposes of this Protective Order:

(a) "Confidential Documents" means documents and other tangible materials containing or reflecting Confidential Information.

(b) "Confidential Information" means traffic data (including but not limited to waybills, abstracts, study movement sheets, and any documents or computer tapes containing data derived from waybills, abstracts, study movement sheets, or other data bases, and cost work papers); the identification of shippers and receivers in conjunction with shipper-specific or other traffic data; the confidential terms of contracts with shippers or carriers; confidential financial and cost data; divisions of rates, trackage rights compensation levels and other compensation between carriers; and other confidential or proprietary business or personal information.

(c) "Designated Material" means any documents designated or stamped as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in accordance with paragraphs 6 or 7 of this Protective Order and any Confidential Information contained in such materials.

(d) "Proceedings" means those proceedings before the Surface Transportation Board ("Board") concerning the transaction in STB Docket No. FD 36105 and any related proceedings before the Board, and any judicial review proceedings arising from STB Docket No. FD 36105 or from any related proceedings before the Board.

2. Confidential Information shall be provided to any party only pursuant to this Protective Order and only upon execution and delivery to GWI and AWT of the applicable Undertaking, forms of which are attached as Exhibits A and B to this Protective Order. Confidential Information shall be used solely for the purpose of the Proceedings, and not for any other business, commercial, or competitive purpose.

3. Personnel of GWI on the one hand, and AWT (including the AWT Shareholders and HOG) on the other hand, and their respective affiliates, including outside consultants and attorneys for any of them, may exchange Confidential Information related to the proposed transaction for the purpose of participating in the Proceedings, but not for any other business, commercial, or other competitive purpose, unless and until the exemption in the Proceedings becomes effective.

4. To the extent that any meetings, conferences, exchanges of data, or other cooperative efforts between representatives of GWI and AWT (including the AWT Shareholders and HOG) or their affiliates are held and carried out for purposes of these Proceedings, such meetings, conferences, exchanges of data and other cooperative efforts are deemed essential for the conduct and disposition of such Proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904, or any other relevant provision of the ICC Termination Act of 1995.

5. If the Petition for Exemption is not approved by the Board, then all Confidential Documents (other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings) that are exchanged between GWI and AWT (including the AWT Shareholders and HOG) and their affiliates but which are not otherwise available to them as a result of their existing affiliation and pursuant to their reporting responsibilities for securities, tax and other purposes, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents. With respect to parties other than GWI, AWT and their affiliates, if the Petition for Exemption is not approved by the Board, or if the Petition for Exemption is issued but GWI does not consummate the acquisition of equity, or control is not effected, then all Confidential Documents, other than file copies of pleadings and other documents filed with the Board and retained by outside counsel for a party to these proceedings, must be destroyed or returned to the party originating the Confidential Information contained or reflected in such Confidential Documents.

6. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains Confidential Information or consists of Confidential Documents, then that party may designate and stamp such Confidential Information and Confidential Documents as "CONFIDENTIAL." Any information or documents designated or stamped as "CONFIDENTIAL" shall be handled as provided for hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 3 and 4 of this Protective Order.

7. If any party to these Proceedings determines that any part of a document it submits, discovery request it propounds, or a discovery response it produces, or a transcript of a deposition or hearing in which it participates, or pleading or other paper to be submitted, filed, or served in these Proceedings contains shipper-specific rate or cost data; division of rates, trackage rights compensation levels, other compensation between carriers; or other competitively sensitive or proprietary information, then that party may designate and stamp such Confidential Information as "HIGHLY CONFIDENTIAL." Any information or documents so designated or stamped shall be handled as provided hereinafter, except that no prohibition in any subsequent paragraph is applicable to an exchange of information pursuant to paragraphs 3 and 4 of this Protective Order.

8. Information and documents designated or stamped as "CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, or to any person or entity except to an employee, counsel, consultant, or agent of a party to these Proceedings, or an employee of such counsel, consultant, or agent, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality Undertaking substantially in the form set forth at Exhibit A to this Protective Order.

9. Information and documents designated or stamped as "HIGHLY CONFIDENTIAL" may not be disclosed in any way, directly or indirectly, to any employee of a party to these

Proceedings, or to any other person or entity except to an outside counsel or outside consultant to a party to these Proceedings, or to an employee of such outside counsel or outside consultant, who, before receiving access to such information or documents, has been given and has read a copy of this Protective Order and has agreed to be bound by its terms by signing a confidentiality Undertaking substantially in the form set forth at Exhibit B to this Protective Order.

10. All parties must file simultaneously a public version of any Highly Confidential or Confidential submission filed with the Board, whether the submission is designated as a Highly Confidential Version or Confidential Version. When filing a Highly Confidential Version, the filing party does not need to file a Confidential Version with the Board, but must make available (simultaneously with the party's submission to the Board of its Highly Confidential Version) a Confidential Version reviewable by any other party's in-house counsel. The Confidential Version may be served on other parties in electronic format only. In lieu of preparing a Confidential Version, the filing party may (simultaneously with the party's submission to the Board of its Highly Confidential Version) make available to outside counsel for any other party a list of all "highly confidential" information that must be redacted from its Highly Confidential Version prior to review by in-house personnel, and outside counsel for any other party must then redact that material from the Highly Confidential Version before permitting any clients to review the submission.

11. Any party to these Proceedings may challenge the designation by any other party of information or documents as "CONFIDENTIAL" or as "HIGHLY CONFIDENTIAL" by filing a motion with the Board or with an administrative law judge or other officer to whom authority has been lawfully delegated by the Board to adjudicate such challenges.

12. Designated Material may not be used for any purposes, including without limitation any business, commercial or competitive purposes, other than the preparation and presentation of evidence and argument in STB Docket No. FD 36105, any related proceedings before the Board, and/or any judicial review proceedings in connection with STB Docket No. FD 36105 and/or with any related proceedings.

13. Any party who receives Designated Material in discovery shall destroy such materials and any notes or documents reflecting such materials (other than file copies of pleadings or other documents filed with the Board and retained by outside counsel for a party to these Proceedings) at the earlier of: (1) such time as the party receiving the materials withdraws from these Proceedings; or (2) the completion of these Proceedings, including any petitions for reconsideration, appeals or remands.

14. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to the Board, unless the pleading or other document is submitted under seal, in a package clearly marked on the outside as "Confidential Materials Subject to Protective Order." See 49 C.F.R. § 1104.14. All pleadings and other documents so submitted shall be kept confidential by the Board and shall not be placed in the public docket in these Proceedings except by order of the Board or of an administrative law judge or other officer in the exercise of authority lawfully delegated by the Board.

15. No party may include Designated Material in any pleading, brief, discovery request or response, or other document submitted to any forum other than this Board in these Proceedings unless: (1) the pleading or other document is submitted under seal in accordance with a protective order that requires the pleading or other document to be kept confidential by that tribunal and not be placed in the public docket in the proceeding; or (2) the pleading or other document is submitted in a sealed package clearly marked, "Confidential Materials Subject to Request for Protective Order," and is accompanied by a motion to that tribunal requesting issuance of a protective order that would require the pleading or other document be kept confidential and not be placed in the public docket in the proceeding, and requesting that, if the motion for protective order is not issued by that tribunal, the pleading or other document be returned to the filing party.

16. No party may present or otherwise use any Designated Material at a Board hearing in these Proceedings, unless that party has previously submitted, under seal, all proposed exhibits and other documents containing or reflecting such Designated Material to the Board, to an administrative law judge or to another officer to whom relevant authority has been lawfully delegated by the Board, and has accompanied such submission with a written request that the Board, administrative law judge or other officer: (a) restrict attendance at the hearing during any discussion of such Designated Material; and (b) restrict access to any portion of the record or briefs reflecting discussion of such Designated Material in accordance with this Protective Order.

17. If any party intends to use any Designated Material in the course of any deposition in these Proceedings, that party shall so advise counsel for the party producing the Designated Material, counsel for the deponent, and all other counsel attending the deposition. Attendance at any portion of the deposition at which any Designated Material is used or discussed shall be restricted to persons who may review that material under the terms of this Protective Order. All portions of deposition transcripts or exhibits that consist of, refer to, or otherwise disclose Designated Material shall be filed under seal and be otherwise handled as provided in paragraph 14 of this Protective Order.

18. To the extent that materials reflecting Confidential Information are produced by a party in these Proceedings, and are held and/or used by the receiving person in compliance with this Protective Order, such production, disclosure, holding, and use of the materials and of the data that the materials contain are deemed essential for the disposition of this and any related proceedings and will not be deemed a violation of 49 U.S.C. §§ 11323 or 11904, or of any other relevant provision of the ICC Termination Act of 1995.

19. All parties must comply with all of the provisions of this Protective Order unless the Board or an administrative law judge or other officer exercising authority lawfully delegated by the Board determines that good cause has been shown warranting suspension of any of the provisions herein.

20. Nothing in this Protective Order restricts the right of any party to disclose voluntarily any Confidential Information originated by that party, or to disclose voluntarily any Confidential Documents originated by that party, if such Confidential Information or Confidential Documents do not contain or reflect any Confidential Information originated by any other party.

Exhibit A

UNDERTAKING – CONFIDENTIAL MATERIAL

I, _____, have read the Protective Order served on _____, 2017, governing the production and use of Confidential Information and Confidential Documents concerning STB Docket No. FD 36105, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 36105, any related proceedings before the Surface Transportation Board (“Board”), and/or any judicial review proceedings in connection with STB Docket No. FD 36105 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Undertakings in the form hereof, and that, at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting materials designated or stamped as “CONFIDENTIAL,” other than file copies, kept by outside counsel, of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____

Affiliation: _____

Dated: _____

Exhibit B

UNDERTAKING – HIGHLY CONFIDENTIAL MATERIAL

I, _____ am outside [counsel][consultant] for _____, for whom I am acting in this proceeding. I have read the Protective Order served on _____, 2017, governing the production and use of Confidential Information and Confidential Documents concerning STB Docket No. FD 36105, understand the same, and agree to be bound by its terms. I agree not to use or to permit the use of any Confidential Information or Confidential Documents obtained pursuant to that Protective Order, or to use or to permit the use of any methodologies or techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and presentation of evidence and argument in STB Docket No. FD 36105, any related proceedings before the Surface Transportation Board ("Board"), or any judicial review proceedings in connection with STB Docket No. FD 36105 and/or with any related proceedings. I further agree not to disclose any Confidential Information, Confidential Documents, methodologies, techniques, or data obtained pursuant to the Protective Order except to persons who are also bound by the terms of the Order and who have executed Highly Confidential Undertakings in the form hereof.

I also understand and agree, as a condition precedent to my receiving, reviewing, or using copies of any information or documents designated or stamped as "HIGHLY CONFIDENTIAL," that I will take all necessary steps to ensure that said information or documents be kept on a confidential basis by any outside counsel or outside consultants working with me, that under no circumstances will I permit access to said materials or information by employees of my client or its subsidiaries, affiliates, or owners, and that, at the conclusion of this proceeding (including any proceeding on administrative review, judicial review, or remand), I will promptly destroy any documents containing or reflecting information or documents designated or stamped as "HIGHLY CONFIDENTIAL," other than file copies kept by outside counsel of pleadings and other documents filed with the Board.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that Applicants or other parties producing Confidential Information or Confidential Documents shall be entitled to specific performance and injunctive and/or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Signed: _____
OUTSIDE [COUNSEL] [CONSULTANT]

Dated: _____